

**EXHIBIT E**

**TRANSCRIPT OF THE TRA'S MARCH 10, 1998, HEARING DENYING HYPERION'S  
APPLICATION**

1 (The aforementioned Directors'  
2 Conference came on to be heard on Tuesday, March 10,  
3 1998, beginning at approximately 9:00 a.m., before  
4 Chairman Lynn Greer, Director Sara Kyle, and  
5 Director Melvin Malone, when the following  
6 proceedings were had, to-wit:)

7 CHAIRMAN GREER: Good morning.  
8 Please be seated. The executive secretary will  
9 please call the agenda.

10 MR. WADDELL: The first item is  
11 97-00889, petition of AT&T Communications for the  
12 convening of a generic contested case for the  
13 purpose of access charge reform.

14 DIRECTOR KYLE: Yes. I'd like  
15 to request, in order to allow more time to review  
16 the briefs that have been filed, that we move this  
17 to the 24th agenda for decision on the threshold  
18 issues.

19 CHAIRMAN GREER: That's fine.

20 DIRECTOR KYLE: No objections?

21 CHAIRMAN GREER: No objections.

22 The next item?

23 MR. WADDELL: The next item is  
24 98-00001, Hyperion of Tennessee, LP, application for  
25 CCN to extend its territorial area of operations to

1 include the areas currently served by Tennessee  
2 Telephone Company.

3 CHAIRMAN GREER: I assume that  
4 all the parties are represented here. Do the  
5 Directors have any questions of the parties or are  
6 they prepared to move forward?

7 DIRECTOR MALONE: No questions.

8 CHAIRMAN GREER: If not, then I  
9 have a comment I'd like to make. My experience in  
10 the business world firmly confirms my belief in the  
11 benefits of competition. Competition normally  
12 balances the conduct of companies with the needs of  
13 the consumers.

14 Tennessee consumers, in my  
15 opinion, will benefit greatly from increased service  
16 offerings and the opportunity for reduced rates that  
17 will come only through telecommunications  
18 competition that this Agency supports. All  
19 Tennesseans are entitled to the benefits to be  
20 derived from competition.

21 Former FCC Commissioner Rochelle  
22 Chong in a recent speech stated that while rural  
23 carriers face some unique circumstances that warrant  
24 some special regulatory treatment, rural carriers  
25 should not carry this argument too far.

1 Commissioner Chong stated that if rural carriers  
2 tried to translate exceptions for rural carriers  
3 into outright insulation against all competition  
4 rural carrier arguments will fall on deaf ears.  
5 There is no question that congress clearly  
6 envisioned that the benefits of competition would be  
7 spread across this great country. I did not want  
8 rural America -- it did not want rural America left  
9 out of the information revolution.

10 I personally believe that the  
11 Tennessee Regulatory Authority has a duty to uphold  
12 both the vision and the substance of the Federal  
13 Telecommunications Act of 1996. This Act provides  
14 the framework from which competition in the  
15 telecommunications industry can develop.

16 Section 253(a) of the Act  
17 specifically addresses the prohibition of any state  
18 regulation or statute that prohibits the ability of  
19 any entity to provide any interstate or intrastate  
20 telecommunications service.

21 As I see it, we have a direct  
22 conflict between the federal law and one of our  
23 state statutes; and the federal law must prevail. I  
24 believe the federal act obviously preempts our state  
25 statute TCA 65-4-201(d) pursuant to the supremacy

1 clause of Article 6 of the US Constitution.  
2 Further, Richardson versus The Tennessee Board of  
3 Dentistry does not preclude the TRA from deciding  
4 this issue.

5 I believe that upholding the  
6 Tennessee statute in this case would undermine  
7 competition and therefore contradict the goals of  
8 the Telecommunications Act. I feel that my position  
9 is further substantiated by the FCC's overturning of  
10 Wyoming and Texas Statutes and The Silver Star and  
11 Texas State cases, respectively.

12 Obviously, the Tennessee General  
13 Assembly felt very strongly about its position in  
14 this matter, and I have great respect for its  
15 opinion. However, I do believe that the federal  
16 statute is unambiguous and must prevail.

17 DIRECTOR MALONE: I have some  
18 comments as well. TCA Section 65-4-201(d) is  
19 currently the law in the state of Tennessee as both  
20 parties in this case have acknowledged. Recognizing  
21 this fact, I am not sitting as a policymaker on this  
22 piece of legislation. Whether I support the  
23 enactment of Section 65-4-201(d) is irrelevant. As  
24 noted by the Court in Hamlin County Education  
25 Association versus The Hamlin County Board of

1 Education, quote, It is not for the courts to  
2 question the wisdom of legislative enactments. We  
3 must take statutes as we find them, close quote.

4 Therefore, as a Director of the  
5 Tennessee Regulatory Authority, it is not my place  
6 to question the wisdom of the general assembly. The  
7 plain language of Section 253(a) of the Federal  
8 Telecommunications Act of 1996 appears to preempt  
9 TCA Section 65-4-201(d).

10 But as the Federal  
11 Communications Commission noted in the Texas  
12 preemption case, if a challenged law or regulation  
13 satisfies the requirements of Section 253(b) of the  
14 Federal Telecommunications Act of 1996, Section  
15 253(a) does not act to preempt it. In other words,  
16 according to the FCC, Section 253(b) operates as a  
17 limitation upon any preemptive challenge launched by  
18 Section 253(a).

19 In my opinion, we cannot and  
20 should not resolve the question before the TRA today  
21 in a vacuum. Section 253(a) cannot and should not  
22 be read as an isolated, philosophical treatise on  
23 the development or advancement of competition in a  
24 given jurisdiction. The Act, in my opinion,  
25 requires much more from states than sterile

1 adherence to the form of competitive doctrine. It  
2 instead, in my opinion, demands that states evaluate  
3 the substance of the development of competition and  
4 proceed accordingly.

5                   In the preamble to the Tennessee  
6 Telecommunications Act of 1995, the Tennessee  
7 General Assembly stated that, quote, It is in the  
8 public interest of Tennessee consumers to permit  
9 competition in the telecommunications services  
10 market, close quote. Further the assembly stated  
11 that, quote, Universally affordable basic telephone  
12 service should be preserved, close quote. Thus the  
13 purpose of the Act is twofold: To foster the  
14 development of competition, and to preserve  
15 universal service.

16                   Among other things, Section  
17 65-4-201(d) ensures that for a period of time  
18 universal service is not disrupted while permanent  
19 universal service mechanisms are considered in the  
20 more rural areas of the state. The general assembly  
21 concluded that prematurely opening up the more rural  
22 areas of the state to competition without some  
23 transition period could result in untoward  
24 consequences that may have substantial harmful  
25 effects on universal service in said areas.

1 In order to ensure that rural  
2 consumers receive both the benefits of the  
3 development of an efficient technologically advanced  
4 statewide system of telecommunications and universal  
5 service during the introductory stages of  
6 competition in this previously monopolistic market,  
7 the general assembly passed Section 65-4-201(d).  
8 Thus Section 65-4-201(d) is, in my opinion, as  
9 Section 253(b) requires, consistent with both state  
10 and federal universal service goals and objectives.  
11 In fact, it is my belief that today absent  
12 65-4-201(d) the universal service objectives in  
13 Tennessee would not be advanced in rural areas and  
14 the goals of federal universal service may be  
15 irreparably undermined.

16 Given the intent of the general  
17 assembly, it appears that Section 65-4-201(d) easily  
18 meets the requirements of Section 253(b). The  
19 requirements for competitive neutrality is indeed a  
20 more difficult determination. To be sure, there  
21 exists a host of arguments to Section 65-4-201(d) is  
22 not competitively neutral as this phrase is defined  
23 by the FCC.

24 Nonetheless, given the  
25 legislature's rationale for enacting Section



1 65-4-201(d), the language of Section 253(b) as a  
2 whole, Section 65-4-201(d)'s pronouncement that any  
3 such protected incumbent forfeits its protection if  
4 it seeks to compete outside of its area, and the  
5 requirement that the general assembly review this  
6 statute every two years, this statute may be held  
7 competitively neutral. In fact, with respect to  
8 all competitors, large or small, 65-4-201(d) may  
9 be viewed as being unwaveringly competitively  
10 neutral.

11 Although the FCC has previously  
12 viewed a similar statute to Section 65-4-201(d) as  
13 not competitively neutral, I am persuaded that at a  
14 minimum the State of Tennessee should have the  
15 opportunity, should it so choose, to argue before  
16 the FCC that its statute is, notwithstanding the  
17 FCC's prior rulings, competitively neutral.

18 As we all know, when new  
19 legislation is placed into effect the interpretation  
20 thereof may develop over time. The minority opinion  
21 one day is often the majority opinion some days  
22 later. Although I respect the FCC's conclusions on  
23 these issues, I fully realize that the FCC's  
24 conclusions may be approved -- while I respect the  
25 FCC's conclusions in this case and fully recognize

1 that a federal court may later approve those  
2 conclusions, I'm also mindful that there has been  
3 relatively little development of what Section 253(b)  
4 does actually mean.

5 If Section 253(b) is interpreted  
6 too narrowly, Section 253(b) may be read out of the  
7 statute, which is clearly not what congress  
8 intended. It may take some time for the FCC and  
9 perhaps the courts to hone the interpretation of  
10 Section 253 of the Federal Telecommunications Act of  
11 1996.

12 For the foregoing reasons, I  
13 would move that the TRA deny Hyperion's application  
14 pursuant to Section 253(b) of the Federal  
15 Telecommunications Act of 1996.

16 DIRECTOR KYLB: I appreciate  
17 those statements. That was beautifully articulated,  
18 and I will second Commissioner Malone's motion. I  
19 too just want to add that I'm very cognizant of the  
20 '95 law that Tennessee passed and the '96 law that  
21 congress passed. However, I think the FCC was given  
22 the right to review state statutes that parties feel  
23 may be in conflict, and I feel confident if they  
24 should review this, they would sustain Tennessee's  
25 legislature's sound policy, which at the time they

1 passed and no one objected.

2 CHAIRMAN GREER: Well, I will  
3 respectfully vote no. I do not believe that 252(b),  
4 in my opinion, is an exemption that will qualify and  
5 comply under the Federal Telecommunications Act, and  
6 I believe that Hyperion's motion should be granted.  
7 So I vote no.

8 MR. WADDELL: The next item is  
9 98-00008, Intellicall Operator Services, Inc.,  
10 application to acquire ownership of Interlink  
11 Telecommunications, Inc.

12 DIRECTOR MALONE: Move to  
13 approve.

14 DIRECTOR KYLER: I vote yes.

15 CHAIRMAN GREER: Make it  
16 unanimous.

17 MR. WADDELL: The next item is  
18 98-00039, BellSouth Telecommunications, Inc.,  
19 petition for approval of resale agreement with  
20 NOW Communications, Inc.

21 DIRECTOR MALONE: Move to  
22 approve.

23 CHAIRMAN GREER: I'll second.

24 DIRECTOR KYLER: I vote yes.

25 MR. WADDELL: The next item is

**EXHIBIT F**

**TENN. CODE ANN. § 65-4-201(D) -- TENNESSEE INCUMBENT LEC  
PROTECTIONIST STATUTE**

**TENNESSEE CODE ANNOTATED**  
**TITLE 65 PUBLIC UTILITIES AND CARRIERS**  
**CHAPTER 4 REGULATION OF PUBLIC UTILITIES BY AUTHORITY**  
**Part 2-- Certificate of Public Convenience and Necessity**

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Current through End of 1997 Reg. Sess.

65-4-201 Certificate required.

(a) No public utility shall establish or begin the construction of, or operate any line, plant, or system, or route in or into a municipality or other territory already receiving a like service from another public utility, or establish service therein, without first having obtained from the authority, after written application and hearing, a certificate that the present or future public convenience and necessity require or will require such construction, establishment, and operation, and no person or corporation not at the time a public utility shall commence the construction of any plant, line, system, or route to be operated as a public utility, or the operation of which would constitute the same, or the owner or operator thereof, a public utility as defined by law, without having first obtained, in like manner, a similar certificate; provided, that this section shall not be construed to require any public utility to obtain a certificate for an extension in or about a municipality or territory where it shall theretofore have lawfully commenced operations, or for an extension into territory, whether within or without a municipality, contiguous to its route, plant, line, or system, and not theretofore receiving service of a like character from another public utility, or for substitute or additional facilities in or to territory already served by it.

(b) Except as exempted by provisions of state or federal law, no individual or entity shall offer or provide any individual or group of telecommunications services, or extend its territorial areas of operations without first obtaining from the Tennessee regulatory authority a certificate of convenience and necessity for such service or territory; provided, that no telecommunications services provider offering and providing a telecommunications service under the authority of the authority on June 6, 1995, is required to obtain additional authority in order to continue to offer and provide such telecommunications services as it offers and provides as of June 6, 1995.

(c) After notice to the incumbent local exchange telephone company and other interested parties and following a hearing, the authority shall grant a certificate of convenience and necessity to a competing telecommunications service provider if after examining the evidence presented, the authority finds:

(1) The applicant has demonstrated that it will adhere to all applicable commission policies, rules and orders; and

(2) The applicant possesses sufficient managerial, financial and technical abilities to provide the applied for services.

An authority order, including appropriate findings of fact and conclusions of law, denying or approving, with or without modification, an application for certification of a competing telecommunications service provider shall be entered no more than sixty (60) days from the filing of the application.

(d) Subsection (c) is not applicable to areas served by an incumbent local exchange telephone company with fewer than 100,000 total access lines in this state unless such company voluntarily



enters into an interconnection agreement with a competing telecommunications service provider or unless such incumbent local exchange telephone company applies for a certificate to provide telecommunications services in an area outside its service area existing on the June 6, 1995.

[Acts 1923, ch. 87, § 1; Shan. Supp., § 1843a1; Code 1932, § 5502; impl. am. Acts 1955, ch. 69, § 1; T.C.A. (orig. ed.), § 65-415; Acts 1995, ch. 305, § 20; 1995, ch. 408, § 7.]

Cross-References. Certificate required for interstate electric power facilities, § 65-4-208. Textbooks. Tennessee Jurisprudence, 21 Tenn. Juris., Public Service Commissions, § 3. Law Reviews. Social Performance of Public Utilities: Effects of Monopoly and Competition, 17 Tenn. L. Rev. 308.

Cited: Tennessee Elec. Power Co. v. TVA, 306 U.S. 118, 59 S. Ct. 366, 83 L. Ed. 543 (1939).

#### Notes to Decisions.

#### ANALYSIS

1. Construction. 2. Power of commission. 3. Denial of certificate. 4. Territory.

##### 1. Construction.

In construing this part, their interpretation may be aided by reference to the original act, Acts 1923, ch. 87. *Holston River Elec. Co. v. Hydro Elec. Corp.*, 166 Tenn. 662, 64 S.W.2d 509 (1933).

##### 2. Power of Commission.

The regulations and control prescribed by these sections were intended to apply to and affect a utility, already holding any required franchise with the commission's (now authority's) approval, which might be about to engage in some specific operation in competition with another similar company. *Holston River Elec. Co. v. Hydro Elec. Corp.*, 166 Tenn. 662, 64 S.W.2d 509 (1933).

This part does not deal with franchises, but purports to regulate the physical operation of public utilities. *Holston River Elec. Co. v. Hydro Elec. Corp.*, 166 Tenn. 662, 64 S.W.2d 509 (1933).

Certificate of convenience under this act is in addition to commission's (now authority's) approval of grant of franchise required by § 65-407 (now § 65-4-107). *Holston River Elec. Co. v. Hydro Elec. Corp.*, 166 Tenn. 662, 64 S.W.2d 509 (1933).

This part authorizes the commission (now authority) to exercise absolute power of regulation and control over public utilities. *Patterson v. City of Chattanooga*, 192 Tenn. 267, 241 S.W.2d 291 (1951).

##### 3. Denial of Certificate.

Denial by public service commission (now authority) of request for certificate of convenience and necessity in certain disputed area was not improper even though area was not receiving telephone service where other telephone company had included area in tariffs and area maps filed while applicant company had not and no residents of disputed area had filed complaints with commission. *Peoples Tel. Co. v. Tennessee Pub. Serv. Comm'n*, 216 Tenn. 608, 393 S.W.2d 285 (1965).

#### 4. Territory.

The word "territory," as used in this section, includes all the area within a territory a public utility has offered and become liable to serve whether the public utility has physical facilities in every part thereof or not. *Peoples Tel. Co. v. Tennessee Pub. Serv. Comm'n*, 216 Tenn. 608, 393 S.W.2d 285 (1965).

Collateral References. Validity of contract between public utilities other than carriers, dividing territory and customers. 70 A.L.R.2d 1326.

T.C.A. § 65-4-201

TN ST § 65-4-201

END OF DOCUMENT



**EXHIBIT G**

**LEGISLATIVE HISTORY BEHIND TENN. CODE ANN. § 65-4-201(D)**



SENATE STATE AND LOCAL GOVERNMENT COMMITTEE  
CONSIDERATION OF TELECOMMUNICATIONS BILLS

COMMITTEE MEETING OF APRIL 18, 1995  
(Tape 1)

Chairman Cohen: On telecommunications. We're on 827 and 891 and first we've got some folks that have been kind enough to come and offer to make some testimony to us and, the Public Service Commissioners, Senator Kyle, Senator Hewlett, excuse me, Commissioner Kyle and Hewlett. Is Commissioner Bissell here? (Commissioner Bissell in background, "Here, yes.") Hi, Keith, how are you doing? I appreciate the three of you all coming and before you testify, Senator Koella has asked to be recognized to make a comment. Senator Koella, you are recognized.

Sen. Koella: I don't know who is involved but it's a pretty good sham. People are having to skip calls and, what they're doing, they call up your, somebody else and then they call your secretary or yourself, but usually the secretaries, and they say that they're for this bill or that bill, and if in the middle of it, in the middle of it they're finding out that the person that was orchestrating it wasn't getting the type of response that they liked, they hang up leaving the person that you were, your person, making them think that you hung up on them because the middle call cuts it off. Now they're doing this all around the State. They're doing it in \_\_\_\_ County and I don't know which one of the operations on this telephone business; whoever it is, whoever is doing it, the State has no business having any type of business relationships with people who do that type of operation, and whoever it is, and if I can ever figure out who is exactly who's doing it, I will dedicate some time to make them very unhappy. But it's a sham and it leaves a taste in your constituent's mouth that you have been rude to them and hang up on them. Now, it's a machine-worked operation, it's a skip call, and if I, I'm going to ask every one of them that

authorized?" It goes into existing law and it says, "The Public Service Commission can authorize competing telephone providers upon the finding that existing service is inadequate. Competing authority must be granted to correct a deficiency and cannot be awarded simply on the basis that competition is in the public interest." I understand that by legislation we can change that. I guess since you all are proponents of competition, I'd like to know what, what existing services you find inadequate if we've got the fourth lowest telephone rates in the country. I guess what I'm asking is, is why do we need to go to competition at this point in time, this year?

Commissioner Bissell: Well, I really believe that regulation, strict regulation is simply a substitute for the lack of competition. Heretofore we have not had the kind of technology that we have today that would permit, let's say the radio-type providers to come in and offer telephone service, which will happen in Tennessee very soon in competition with local telephone companies. We haven't had the technology that would permit true competition in the local service market. I think we have that today. It won't happen overnight and that's why we have safeguards in the legislation and in the rules that we presented to you during the evolution of competition. But I think what we have now, again, is technology that permits true competition, not regulation, which is a substitute for competition. We believe at the Public Service Commission that indeed we can have lower rates over the long haul, and I don't want to speak for my colleagues because we differ on some of these issues, broader services and higher quality services through competition and permitting other telecommunications providers to come in and provide advanced telecommunications services in addition to, including cable TV companies who will provide an array of services.

Sen. Haun: Okay. Basically we've got South Central Bell and United Telephone Southeast that, that are the major players. If companies have less

than a hundred thousand lines then they're not affected. And this, under Senate Bill 827 and 891 they appear to be the same according to the CAD and the PSC. it says such areas in Knox County, for example, such as Concord, Powell, Halls Crossroads, and so on, that are serviced by companies having less than a hundred thousand lines won't be able to see the effects of this competition at this point in time. Could you tell me how those areas, their basic residential rates, differ from someone who might be with the two majors in Knox County at this point in time?

Commissioner Bissell: They serve principally rural areas, are served by a small telephone companies and we don't anticipate that initially the newcomers to providing local competition, local telephone service, will want to come into the rural areas, and that's why under the legislation and under our rulemaking for a period of time it's not capped in the bill I don't think by Senator Rochelle how long they're excluded, but we will continue to regulate those companies by the rate base form of regulation which we regulate them now. We regulate them just like we do now. I would point out, though, that I think that the two major telephone companies probably can serve some 85% of the consumers in Tennessee and that that is a very large portion of the population that will benefit from this competition.

Sen. Haun: For these small telephone companies that serve the rural areas, what is their basic residential rate versus someone who is serviced by the two majors today? Prior to this bill.

Commissioner Bissell: Well, I think it varies according to the cost of providing that service. In some instances it's lower and in some instances it's higher, but those basic rates will not change under this legislation because we'll continue to regulate them as we do now.

Sen. Haun: Mr. Chairman, that's the only question I had under Item 1. I'm kind of like Senator Ford, I've read this bill, I do have a lot of questions and

SENATE STATE AND LOCAL GOVERNMENT COMMITTEE  
CONSIDERATION OF TELECOMMUNICATIONS BILLS

COMMITTEE MEETING OF APRIL 18, 1995- Page 3

Consideration of a portion of the discussion dealing  
with exemption to companies with 100,000 lines or less

Chairman Cohen: I think that Miss Owen is here who represents consumer interests in Tennessee, and if Miss Owen, I'd like to know if you have a position that you would like to state on these bills from a consumer perspective...

Owen: Thank you, Mr. Chairman, my name is Elizabeth Owen. I'm the Director of the Tennessee Division of Consumer Affairs and I've been in that position 1 month over eight years and I want to say at the outset, the purpose of the Division, of course, is to protect consumers, and that's consumers all across the State as well as any business interests that might have a problem dealing with consumer affairs.

I want to be very definite in saying one thing, that the Division welcomes competition. We feel that it's exciting for the consumer and can be beneficial because equal competition does drive prices down. I will add, as a humorous note, that we look forward to competition in local telephone services even though it is going to increase our complaint load. I will also say if you think you've been bothered by long-distance services calling you asking you to switch, you ain't seen nothing yet, when we get local service involved here because we're really going to see advertising then. But, I want you to know one thing about competition, and that is it does take a long time. We have had competition in long-distance service for almost twelve years now, and the consumers who call my office with telephone-type, telephone-related complaints aren't even aware of a long-distance carrier. They don't even know who has their long-distance service. It's very confusing for a lot of people and, furthermore, they don't understand when they've been slammed, when they lose their long-distance service with one carrier and are put to another. They don't have a concept of who is doing this to them and everything is blamed on the telephone company. It's been twelve years and still they don't understand the process and how it goes on. They don't understand the changes in the telecommunications industry and, furthermore, I don't think they understand really, what we're discussing here today. I give about two or three speeches a week and no one has expressed any interest, even though I ask these audiences, "Have you heard about the bill that's before the General Assembly this year?" And no one is aware of it. Our office has received no calls or no questions about this, what I consider to be probably the bill with the biggest impact on consumers' pocketbooks that's come up in the eight years that I've been here.

I think what I'm concerned mostly about, in that I said earlier, I represent consumers in all parts of the State, and I feel that true competition is going to come very slowly to some of those areas and we have to look out for the consumers there. It's going to be hard for me to explain to those consumers why their telephone bills perhaps go up in an area, in a time, rather, when we have declining cost. And that's going to be hard to explain to those consumers. I'm worried about getting ourselves in a box where we have a price cap on possible increases in the local telephone bill when the true costs of the industry are going down.

Basically what I'm interested in is making sure that there's a level playing field and this includes the consumer end of it, too. That they are not

treated unfairly, that those in areas where there is no competition yet, and won't be for some time to come, that they get treated fairly, too, and are not subject to what could be construed an unnecessary price increase.

Chairman Cohen: Thank you, Miss Owen. Are there questions of Miss Owen? Senator Womack.

Sen. Womack: I noticed both bills exempt out companies of 100,000 lines or less. If we're really trying to establish competition, is that appropriate? Is that not the very areas you are talking about?

Owen: Senator Womack, I don't think I know how to answer your question.

Sen. Womack: So, I mean, both bills exempt out 100,000 lines or less and your comment just was that you had a concern about rural services. Are those not the rural services that both bills, I mean, neither bill does a thing for the services that you just indicated to me that you had the most concern about.

Owen: Well, then, maybe we need to look at that.

Sen. Womack: Is that true?

Owen: I mean, I think, you know, I think we do need to treat consumers all over the State fairly, if we're going to provide competition, make sure that it's for everyone.

Sen. Womack: Okay, thank you.

Chairman Cohen: Further questions of Miss Owen? No further questions for Miss Owen. Senator Rochelle, do you have a question?

Sen. Rochelle: Elizabeth, the answer to Andy's question is obvious. And I guess that's why I'm tempted to say it. And that is, is that, in those areas where you got a lot of land to cover and not very many people to get there, nobody wants to be there.

Owen: That's true.

Sen. Rochelle: Well, you don't have to have a tremendous working knowledge of the implications of each bill to know that, do you?

Owen: No, it seems pretty obvious to me, you're right.

Chairman Cohen: Thank you, Senator Rochelle.

Tape Transcript  
Public Chapter 408, 1995

House, Floor  
April 17, 1995  
House Bill 695  
Tape H-57

Clerk: House Bill Number 695, by Rep. Bragg and others. An act to amend T. C. A. Title 65, Chapter 4, Parts 1 and 2 and Title 65 Chapter 5 Part 2 relative to regulation of telecommunication service providers by the Public Service Commission.

Naifeh: Mr. Chairman Bragg.

Bragg: Permission to come to the well?

Naifeh: In the well.

Bragg: Mr. Speaker, members of the House, I feel complimented. I've never seen so much money spent on advertising and radio commercials on any bill I ever handled. I know a lot of you have received a number of telephone calls about this bill over the weekend. I know a number of you are spooked about what this bill does. Let me say to you in the beginning, I am not going to risk a 30-year career on a bill that I don't believe is a good bill and needs to be done somewhere. A number of states have already had bills which will purport to do what we are talking about here. The bill that I have is a bill that tries to draft a road map by which we can get from monopoly, a monopoly telephone operation to a competitive telephone operation. This road map directs the way that it will be done and lets every party know exactly where they stand. There are other bills and other efforts, some which might keep the monopoly in the phone company but let their competitors not be regulated. And I have heard of those that want us to just get out of the business and turn all of this over to the Public Service Commission. I think the General Assembly needs to have something to say about this because we're talking about legislation which is going to affect billions of collars, billions of dollars. And everybody who uses a telephone or a cable set, you, we don't really know what the technology of this is going to be in this nation five years from now. I read an article in the U. S. Today that, that, this last week, that now people are being able to communicate by

Naifeh: Rep. Purcell.

Purcell: Thank you, Mr. Speaker, members of the House. The House members will remember where we were last week when we last took up this matter. At that time, the previous 16 amendments were withdrawn or in the case of one amendment was rolled down. But this amendment is the heart of everything that Mr. Bragg just talked about, and the heart of our vision, and I hope your vision for the future of telecommunications in Tennessee. This is the amendment that rewrites in most important ways the Senate bill that was sent to us, now, I suppose, two weeks ago. I don't care to talk at any length about perhaps the deficiencies that we found. I think it's perhaps better to emphasize the positive. As Mr. Bragg said, we looked at that bill over a period of weeks, and made the improvements that we think give us the confidence that this is not only the right thing for Tennessee as a whole, but the right for your constituents, and therefore, the right thing for you today. The rewrite of this bill begins right with Section 1. We restated the declaration of policy, the basic foundation upon which this bill will stand, and that policy now stated taking language that was proposed initially by one of the wisest telecommunications lawyers in this state, a policy that says straightforwardly and in a simple way that not only a court but a citizen can understand that what we're trying to do here is foster the development of an efficient and advanced statewide system of services. And it's a system that needs to remain affordable. That's the basic statement of policy. That's the promise on which everything else stands. And the amendment that's before you, you have that assurance. We make clear the powers of both the Public Service Commission and then the successor, the Tennessee regulatory authority, in Section 4 of the bill. The authority of that body to issue orders and to do those things that they need to do to be a regulator. We make clear for the first time their ability to monitor the continued functioning of universal service. There were many issues when the bill first came before us as to whether that was a one time snapshot look or whether it would enable the authority to continue to look on a regular basis on where we were on universal service. The change in this amendment makes that clear. There were those who were concerned that the FYI plan that had been established by the Public Service Commission, and upon which many promises were based, would in some way be set aside, or the promises, put an easier way, wouldn't be fulfilled. Section 10 of the bill, Section 10(k) of the amendment rather, makes it absolutely clear that those funded requirements that were placed upon the companies in this state must be fulfilled. The direction is clear. There should be no question about it. There were concerns that the productivity factor that was placed in the bill was not sufficient to protect consumers. Many of you have heard the discussion. Let me just say that we changed the productivity factor so that consumers get the benefit of

productivity, whether inflation is high or inflation is low. We placed in the bill a provision that is identical in effect to the provision placed in the Georgia legislation by the Georgia legislature, that makes sure again, that whatever the inflationary situation in this state, it's low now, and our change is particularly directed toward low inflation times, that the consumers will be protected whatever later increases may be required in telephone rates. We made absolutely clear in this legislation through this amendment that white pages listings, for examples, 900 and 976 blocking services for example, that 911 emergency services for example would be maintained as basic service. That any consumer that signs up for basic service would know that these things they would receive. And at the same time, we make sure that it would be at least at the same level of quality that they now receive their services. Many were concerned that quality might slip, that competition might change the quality level of the voice transmission and the data transmission that your constituents receive. This amendment makes it absolutely clear that cannot occur. There are further protections for consumers placed within the bill. We make sure for example again that the services that I described are included. We further clarify basic protections to make sure it's not just the monthly bill that is maintained, that is frozen for four years in basic service, but as well that nonrecurring costs, that was not assured in the Senate bill, that means the cost of installing that single line, that means the cost of installing the basic services that are protected, the nonrecurring costs are similarly frozen and similarly controlled. We also made it clear that smaller competitors need protection. That was the issue you heard about, interconnection. This amendment makes it absolutely clear what rights those interconnection companies have, and that's what brought back to this amendment and to this bill the smaller companies that needed to enter telecommunications so as to assure the competition in the markets that we want. Medium sized companies needed to be there too. We assured the responsibilities and the rights of the consumer advocate. We also continued to assure the investigatory responsibilities and authority of the Service, Public Service Commission as well as the authority itself. And again, Rep. Charlie Curtis, many of you may know, in the Commerce Committee, Rep. Curtis brought an important issue up, oversight by this General Assembly to this legislation in the Commerce Committee. The language in this amendment is even stronger at the request and recommendation of Rep. Curtis, that we needed to make sure that we would continue to get the information we need. Every two years, the Public Service Commission, and then the Tennessee Regulatory Authority, will be required to report to you a whole wide range of bits of information that you will need to decide whether this bill is working and whether these people are playing fair, or whether this law needs changing in some way. And then finally, an issue arose as to what



would happen when we went into competition generally. Our hope, you know, is that there is not going to be one single monopoly any more in local service or in any other service. Our hope is that they'll be a whole wide range of people through a whole wide range of technologies who get involved. Who are interested in what we are doing and want to put their money and their expertise on the line in Tennessee to give us the best system we can have, but to give us the cheapest and most affordable system we can have. The bill that came to us from the Senate, in our opinion, did not provide all of that. One concern was those middle level companies. I described that a moment ago. But another concern was how do we get smaller competitors involved in this industry quickly. Because competition needs to come just as soon and as quickly as it can come. We need small business involved too. It's not just enough that big companies from California and other places come into Tennessee and compete. We want Tennessee companies, home grown companies, small companies in your districts involved in competition. We want your neighbors to reap the benefit of competition in Tennessee. We want the people that you go to church with, that you see in your community to have an opportunity to be players at the table in telecommunications deregulation and reform. That's what the last piece of what this amendment does. It gives those people across this state the opportunity to have the financial ability to be players, to be competitors and to be successful just like the big guys in Atlanta and California and other places. That's Section 17 and 16 of the bill. You've heard a lot about that. But that's what that's about at its heart. It's about making it possible for those other people to compete with our hope that they will succeed and when they succeed, your constituents will succeed because rates will go lower. Mr. Speaker, at this time, if I could, let me yield to you, or do you want to do it later at the well, pending any questions, concerning this amendment, with everyone here remembering that this amendment makes the bill, makes the bill an acceptable bill in our view, makes a bill that all of the people Mr. Bragg recommended, rather referred to just a moment ago, puts them in a position to support. Let me say as to this amendment there is no objection. All support the amendment. There may be those who think it doesn't go far enough. There may be those who would like something else. But there is no objection as to this amendment. And so Mr. Speaker, with that understanding and explanation at this time, I'd move adoption of amendment number 17.

**Naifeh:** Gentleman moves adoption of amendment number 17. Properly seconded.  
**Rep. Byrd.**

**Byrd:** Thank you, Mr. Speaker. Would the sponsor yield?